



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,432	04/06/2001	Alexandre M. Izmailov	VGEN.P-066	6093

57600 7590 04/07/2006

HOLLAND & HART LLP  
60 E. SOUTH TEMPLE  
SUITE 2000  
SALT LAKE CITY, UT 84111

EXAMINER

LY, CHEYNE D

ART UNIT PAPER NUMBER

2168

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/827,432	<b>Applicant(s)</b> IZMAILOV ET AL.	
	<b>Examiner</b> Cheyne D. Ly	<b>Art Unit</b> 2168	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

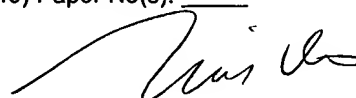
4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_  
 Claim(s) objected to: 14-21.  
 Claim(s) rejected: 1-8 and 10-13.  
 Claim(s) withdrawn from consideration: 9.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
 13. ☒ Other: See Continuation Sheet.



**TIM VO**  
**PRIMARY EXAMINER**

Continuation of 3. NOTE: The proposed amendment to claim 14 raises new issues that would require further consideration and/or search. In Applicant's remarks, filed March 23, 2006, Applicant has indicated "Applicant has rewritten claim 14 in independent form and to include the limitations of independent claim 10, from which it previously depended." However, independent claim 10, step (a), filed August 05, 2005, recites "selecting for each data trace one or more alignment points corresponding to an internal peak associated with internal bases that are highly conserved in the target nucleic acid." The limitation of claim 10, step a, cited above has been interpreted as a required limitation. While, as amended, the instant claim 14, step a, recites "selection for each data trace...selected from the group consisting of alignment points corresponding to an internal peak associated with internal bases that highly conserved in the target nucleic acid..." Therefore, the instant claim 14, step a, has been interpreted as to have at least 3 options from which to select, while, claim 10, step (a), filed August 05, 2005, has only one option from which to select. Further, claim 14, filed August 05, 2005, recites "further comprising alignment points selected from the group..." which does not make the limitation of "alignment points corresponding to an internal peak associated with internal bases that are highly conserved in the target nucleic" in 10, step (a), filed August 05, 2005, optional.

Continuation of 11. does NOT place the application in condition for allowance because:

Claims 1-8 and 10-13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Allex et al. (1997) (hereafter Allex). This rejection is maintained with respect to claims 1-8 and 10-13, as recited in the previous office action mailed October 25, 2005.

Applicant's argument that the claim amendments have place the claims in condition for allowance is not persuasive because of the non-entry of said amendments, as discussed above.

Continuation of 13. Other: The cancellation of claims 1, 5, and 10 has not been entered because of the non-entry of the claim amendments.

A handwritten signature in black ink, appearing to be "Allex" or similar, written in a cursive style.